

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRUSTEES OF NATIONAL ELEVATOR	:	CIVIL ACTION
INDUSTRY PENSION, HEALTH	:	
BENEFIT, EDUCATIONAL FUNDS,	:	NO. 05-3807
ELEVATOR CONSTRUCTORS	:	
ANNUITY AND 401(K) RETIREMENT	:	
PLAN	:	
	:	
v.	:	
	:	
PACIFIC ELEVATOR CORP.	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

December 5, 2005

Defendant Pacific Elevator Corporation (“Pacific Elevator”) asks the court to transfer this matter to the United States District Court for the District of Hawaii because Pacific Elevator and all relevant records and witnesses are located in the District of Hawaii. Plaintiff Trustees of the National Elevator Industry Pension, Health Benefit, Educational Funds, Elevator Constructors Annuity and 401(K) Retirement Plan (“Trustees”) argues Pacific Elevator cannot meet its burden under 28 U.S.C. § 1404(a). I will deny Pacific Elevator’s motion because the private and public interests favor adjudication of this case in the Eastern District of Pennsylvania.

FACTS

The Trustees brought this action pursuant to §§ 502 and 503 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1132 and 1145 and § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), seeking delinquent contributions and interest owed by Pacific Elevator to multi-employer benefit plans administered by the Trustees. The plans are governed by ERISA, which permits an action “be brought in the district where the plan is administered, where

the breach took place, or where a defendant resides or may be found” 29 U.S.C. § 1132(e)(2).

Pacific Elevator concedes venue is proper in Pennsylvania because the plans are administered in Newton Square, Pennsylvania. Nevertheless, defendant moves for an order transferring the action to the District of Hawaii, where it transacts business, because: (1) the claims arise out of actions occurring in Hawaii, (2) all witnesses and records are located in that forum, and (3) Pacific Elevator is involved in litigation pending in the District of Hawaii relevant to plaintiff’s claims. The Trustees counter these factors do not disturb the balance of the private and public interests toward the Eastern District of Pennsylvania forum, especially considering: (1) the plans are administered in Pennsylvania where Pacific Elevator failed to make the required trust contributions and to meet certain reporting requirements, (2) the Trustees act in the public interest in seeking to collect monies owed on behalf of its participants and beneficiaries, (3) the need for uniform and consistent administration of the plans in light of the large number of actions filed each year, and (4) the non-preclusive effect of the District of Hawaii case if this Court grants the motion to amend the complaint filed by the Trustees.

DISCUSSION

Section 1404(a) of Title 28 of the United States Code, which governs motions for transfer of a case where both the original and requested venue are proper, provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The burden is on the moving party to establish the need for a transfer. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995).

Motions for transfer pursuant to section 1404(a) are not liberally granted because “the

plaintiff's choice of forum is of paramount concern and should not be lightly disturbed." *Shutte v. Armco Steel Corp.*, 26 F. Supp. 2d 747, 749 (3d Cir. 1970). Federal district courts have wide discretion to consider such motions "based on an individualized, case-by-case consideration of convenience and fairness." *Dinterman v. Nationwide Mut. Ins. Co.*, 26 F. Supp. 2d 747, 749 (E.D. Pa. 1998). In determining whether to grant a discretionary transfer, the court must balance the private and public interests section 1404(a) reaches. Private interests include: plaintiff's choice of forum, defendant's preference, whether the claim arose elsewhere, the convenience of the parties as indicated by their relative physical and financial condition, the convenience of the witnesses to the extent witnesses may be unavailable for trial in one of the fora, and the location of books and records only if files could not be produced in the alternative forum. *Jumara*, 55 F.3d at 879-80. Public interests include: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in a diversity case. *Id.* at 880.

Applying and balancing these interests precludes transfer. The Trustees expressly elect the Eastern District of Pennsylvania as its choice of forum, whereas Pacific Elevator prefers Hawaii. Pacific Elevator contends the claim arose in Hawaii because the hours for which the Trustees claim contribution were worked in Hawaii and all the witnesses and records are there. The collective bargaining agreement, however, required Pacific Elevator to make contribution payments and file reports with the Trustees in this forum. It is defendant's failure to comply with the applicable terms of the agreement which gives rise to the asserted claims.

While Hawaii may be more convenient for Pacific Elevator's witnesses, there is no indication the witnesses would be unavailable for trial. Defendant has neither argued nor presented any evidence suggesting any of its witnesses are outside the subpoena power of this Court. This case may be resolved largely based on documentary evidence, rendering the need for fact witnesses and any attended costs for transportation and lodging expenses for such witnesses unnecessary. *See Trs. of the Nat'l Elevator Indus. Pension, Health, Benefit & Educ. Funds v. Cont'l Elevator Co.*, No. 98-5311, 1999 U.S. Dist. LEXIS 7062, at *9-10 (E.D. Pa. May 12, 1999). "Moreover, depositions could be used to present the testimony of witnesses who would not be available in this forum." *Trs. of the Nat'l Elevator Indus. Pension, Health, Benefit & Educ. Funds v. Ramchandani*, No. 98-6108, 1999 U.S. Dist. LEXIS 3182, at *6 (E.D. Pa. Mar. 12, 1999).

Nor is the burden on Pacific Elevator to produce and ship records to this forum a paramount concern; were this Court to transfer the case to Hawaii, the Trustees would simply assume the burden of this inconvenience. The asserted financial hardship for Pacific Elevator could be minimized by simply allowing the Trustees to inspect and copy documents at its place of business in Hawaii, *see* Fed. R. Civ. P. 34(a), or, as counsel for Trustees indicated at the hearing on this motion, by emailing copies of the necessary documents in portable document format.

Interest of justice concerns also militate against transfer. A strong public interest exists in having the plans administered uniformly and correctly. While the multi-employer plans have a national reach, their administration occurs only in Pennsylvania where there is a strong local interest in having plan matters resolved in this forum. The Eastern District of Pennsylvania also would maximize uniform administration throughout the country. The Trustees have filed, and will continue to file, actions to enforce the plans and the collective bargaining agreement in this district.

“The orderly administration of justice suggest[s] that there may be advantages to having them adjudicated in one district to lessen the likelihood of inconsistent results.” *Cont’l Elevator Co.*, 1999 U.S. Dist. LEXIS 7062, at *11. Requiring the Trustees to litigate claims in each employer’s home state risks nonuniformity and endangers the Trustees’ ability to fulfill its fiduciary duty to administer the plans for the best interests of all participants.

The Court is mindful of the pending litigation in the District of Hawaii related to whether Pacific Elevator is subject to a settlement agreement addressing the termination of an employee, Steve Hazel. The Trustees asserted in its Complaint a claim for delinquent contributions arising out of that settlement. Recognizing the preclusive effect of the outcome of that case, the Trustees have filed a motion seeking leave to amend its complaint to dismiss the claim. Courts within this district should liberally grant motions for leave to amend unless there is undue delay or bad faith in seeking the amendment, prejudice to the opposing party, or futility of amendment. *Adams v. Gould Inc.*, 739 F.2d 858, 864 (3d Cir. 1984); Fed. R. Civ. P. 15(a). Because the court finds none of these factors are present, it will grant the Trustees motion to amend the complaint. The case pending in the District of Hawaii therefore is distinct and has no bearing on whether to grant Pacific Elevator’s motion for change of venue.¹

Balancing the private and public factors reveals a transfer to Hawaii would merely shift the

¹Pacific Elevator asks this Court to follow the reasoning in *Teamsters Pension Trust Fund of Philadelphia and Vicinity v. Ratner Enterprises, Inc.*, No. 85-2690, 1986 U.S. Dist. LEXIS 30217, at *4 (E.D. Pa. Jan. 22, 1986), where the court found the interest of justice favored a transfer to the Northern District of Illinois because there were common issues raised in a bankruptcy case involving the defendant in that district. This Court does not find *Ratner* applicable to this case because dismissal of the claim for contributions related to Hazel’s grievance removes the interest of justice concerns the *Ratner* court found persuasive – there is no risk of duplicative suits or inconsistent decisions by different courts and no concern for the conservation of judicial resources.

inconvenience associated with choice of venue from Pacific Elevator to the Trustees. A shift in inconvenience, by itself, is not sufficient for this Court to exercise its discretion and grant a motion for change of venue under section 1404(a). Accordingly, I find that the interests of justice and the convenience of the parties and witnesses do not warrant a transfer.

An appropriate order follows.

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v.	:	
	:	
PACIFIC ELEVATOR CORP.	:	

ORDER

AND NOW, this 5th day of December, 2005, it is hereby ORDERED Defendant Pacific Elevator Corporation's Motion for Change of Venue (Document 7) is DENIED. Plaintiff's Motion for Leave to File Amended Complaint (Document 10) is GRANTED.

It is further ordered the schedule in this matter is amended as follows:

- Close of fact discovery is February 20, 2006;
- Dispositive motions are due March 6, 2006;
- Responses to dispositive motions are due March 20, 2006;
- Plaintiff's pre-trial memorandum is due April 14, 2006;
- Defendant's pre-trial memorandum is due April 21, 2006;
- Joint requested points for charge, joint proposed verdict slip, and voir dire questions, as explained in the Honorable Juan R. Sánchez's on-line procedures, are due April 28, 2006. Joint exhibit binder is to be submitted to chambers no later than 4:30 p.m. the day prior to trial;
- Final pre-trial conference is scheduled for May 2, 2006 at 10:00 a.m.;
- The matter is in the May 8, 2006 trial pool.
- Counsel are referred to Judge Sánchez's operating procedures for further

information: <http://www.paed.uscourts.gov/documents/procedures/sanpol.pdf>

BY THE COURT:

\s\ Juan R. Sánchez, J.
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